

Lawrence A. Wagner, OSB #024770  
lwagner@lawssl.com  
STEWART SOKOL & LARKIN LLC  
2300 SW First Avenue, Suite 200  
Portland, OR 97201-5047  
Telephone: (503) 221-0699  
Facsimile: (503) 223-5706

*Attorneys for Plaintiff Tower Insurance Company of New York*

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**TOWER INSURANCE COMPANY OF NEW YORK**, a New York corporation,

Plaintiff,

v.

**ROSE CITY AUTO GROUP, LLC**, an Oregon limited liability company; **LEONARD M. SHILEY**, an individual; **TERESA BYLE**, an individual; **LOGAN DRIEDRIC**, an individual; **JOANNA STONER**, an individual; **STEPHEN STONER**, an individual; **LOVE MARTINO**, an individual; **ANAN SRIVILAI**, an individual; **CAMERON JOHNSON**, an individual; **JONATHAN GILBERT**, an individual; **TINA HARRAL**, an individual; **ROY WIEGAND**, an individual; **NATHAN LANGER**, an individual; **KAREN BERSINE**, an individual; **MELISSA STEVENS**, an individual; **TONY EDWARDS**, an individual; **DEBBIE RECKTANGLE**, an individual; **RODNEY JENKINS**, an individual; **STEPHEN SCHANTIN**, an individual; **BRITTANY LAWRENCE**, an individual; **MATT REED**, an individual; **SHERIAL REED**, an individual; **RACHEL SCHANTIN**, an individual; **EZEKIAL HUNT**, an individual; **BOBBY HEAGLE**, an individual; **LANEY BLANKENSHIP**, an individual; **LONNEY FRANCIS**, an individual; **OREGON COMMUNITY CREDIT UNION**, an Oregon non-profit entity; **TWINSTAR CREDIT UNION**, a Washington nonprofit corporation; **LOBEL**

Case No. 14-cv-00975-MO

**MOTION REGARDING RESOLUTION OF CLAIMS AND FINAL DISBURSEMENT OF FUNDS**

MOTION REGARDING RESOLUTION OF CLAIMS  
AND FINAL DISBURSEMENT OF FUNDS - PAGE 1

1591.001-01160567; 1

STEWART SOKOL & LARKIN LLC  
ATTORNEYS AT LAW  
2300 SW First Avenue, Suite 200  
Portland, OR 97201-5047  
(503) 221-0699  
FAX (503) 223-5706

**FINANCIAL CORPORATION**, a California corporation; **THE EQUITABLE FINANCE COMPANY**, an Oregon corporation; **UNITUS COMMUNITY CREDIT UNION**, an Oregon non-profit entity; **WESTLAKE FLOORING COMPANY LLC, DBA WESTLAKE FLOORING SERVICES**, a California limited liability company; and **DOES 1-30**,

Defendants.

## **MOTION**

Plaintiff Tower Insurance Company of New York ("Plaintiff") moves the court for an order that resolves all claims filed against the Bond Proceeds filed with this Court and for an Order that provides for the disbursement of all the remaining Bond Proceeds held by the Court.

### **MEMORANDUM IN SUPPORT OF MOTION**

#### **I. Introduction**

Plaintiff filed this case due to the significant number of claims it received against the Bond at issue in this case, and the size of such claims. The Bond's penal sum was \$40,000. On or about December 15, 2014, this Court entered an Order to Deposit Funds (Docket # 35). In conformance with that Order, Plaintiff deposited the sum of \$40,000 into the Court's registry.

On November 20, 2014, this Court entered an Order for Interpleader Discharging Plaintiff from Further Liability, and for an Award of Plaintiff's Costs and Attorney Fees. (Docket # 32). In that order, the Court ruled that "Tower shall be allowed to recover from the Bond Proceeds the sum of \$12,170.42 ... The clerk of the court is hereby directed to disburse from the registry of the court, the sums awarded to Tower." In conformance with that order and a subsequent motion to disburse, the Court Clerk disbursed the sum of \$12,170.42 to Plaintiff. There remains in the Court's registry the

**MOTION REGARDING RESOLUTION OF CLAIMS  
AND FINAL DISBURSEMENT OF FUNDS - PAGE 2**

sum of \$27,829.58 that should be disbursed to pay legitimate claims against the Bond Proceeds or returned to Plaintiff.

## **II. Disposition of Parties Who Have Not Appeared**

On March 2, 2015, the Court ordered that “All parties have been served or waived formal service, and the time to appear in this matter has passed.” Docket # 48. In Docket Item 49, the Court then “entered” the defaults referenced in Docket Item 49. It appears the Court did not default all defendants who have failed to appear. For instance, Defendants Teresa Byle, Logan Driedric, Anan Srivilai, Tina Harral, Nathan Langer, Karen Bersine, Lobel Financial Corporation, The Equitable Finance Company, Rose City Auto Group, LLC and Leonard Shiley are not mentioned in either Docket Item 48 or Docket Item 49.<sup>1</sup> Defendant Rachel Schantin was mentioned in Docket Item 48, but not in Docket Item 49. These parties have all failed to appear within the time allowed, and it seems appropriate for the Court to default these parties as well, so that this matter can be concluded.<sup>2</sup>

## **III. Resolution of Claims**

Despite numerous contacts from various claimants indicating that they will file claims with the court,<sup>3</sup> and documents to indicate the potential of numerous additional claims, it seems that only seven claims have been filed against the Bond Proceeds and that there will be funds remaining after the resolution of claims to return to Plaintiff.

---

<sup>1</sup> Plaintiff already obtained a default order and judgment against Defendants Rose City Auto Group, LLC and Leonard Shiley on Plaintiff’s second claim for relief, but did not seek a default against these defendants in connection with the interpleader claim.

<sup>2</sup> Plaintiff’s goal in this case was to make the funds available to these claimants and does not intend to actively seek the defaults against any party who wants to make a claim, but the time to appear and assert a claim has long expired.

<sup>3</sup> As recently as February 18, 2015, Claimant Nathan Langer indicated an intent to file a claim for approximately \$8,000. As of March 2, 2015, Mr. Langer’s counsel (Ethan Chatov) informed the undersigned that Mr. Langer does not intend to file a claim.

Plaintiff hereby requests that the Court resolve all the pending claims and that the Court enter an order that provides for the disbursement of: (a) any awarded claims to the respective claimant(s) (in a pro-rata portion of the claims or in any other equitable amount, if necessary, due to a lack of sufficient funds to pay all valid claims); and (b) any balance of the Bond Proceeds to Plaintiff.

Plaintiff presents the following items that may be relevant for the Court in analyzing the pending claims:

**A. The Standard for Claims Against the Bond**

ORS 822.030(2) provides for the basis of a claim against a motor vehicle dealer bond such as the subject Bond.

Any person shall have a right of action against a vehicle dealer, against the surety on the vehicle dealer's bond and against the letter of credit in the person's own name if the person suffers any loss or damage by reason of the vehicle dealer's fraud, fraudulent representations or violations of provisions of the vehicle code relating to:

- (a) Vehicle registration;
- (b) Vehicle permits;
- (c) The transfer or alteration of vehicles; or
- (d) The regulation of vehicle dealers.

**B. All Claims by Persons "Other than Retail Customers" are Limited to a Total of \$20,000.**

It appears that Joanna and Stephen Stoner are the only "retail customers" to have filed claims against the Bond Proceeds. All the remaining claimants are "other than retail customers." This is important because all claims "by persons other than retail customers of the dealer" are limited to a total of \$20,000 from the Bond Proceeds. ORS 822.030(3).

Plaintiff will leave it to the Court and the other parties to ascertain whether the reduction in the Bond Proceeds by way of disbursement to Plaintiff should reduce the

\$20,000 portion of the Bond Proceeds that is available to non-retail consumers and retail consumers equally, whether the payment to Plaintiff will reduce the two portions of the Bond proceeds in a pro-rata manner, or otherwise.

**C. Are the Non-Consumer Claims Valid?**

Lenders, such as the non-consumer claimants in this case will often assert that a dealer's failure to pay off a loan or clear title supports a claim under ORS 822.030(2). However, there are certainly limitations to such claims. For instance, see ORS 822.045(2), which provides that "A dealer shall not be considered to have committed the offense described in subsection (1)(j) of this section if the dealer fails to satisfy an interest in a vehicle or camper that arises from an inventory financing security interest for which the dealer is the debtor." There is also Oregon case law that explains the limitations of lenders' claims against a motor vehicle dealer bond. See, e.g., *Brasher's Cascade Auto Auction, Inc. v. Leon*, 247 Or App 535 (2011); and the summary judgment briefing and order in Oregon Circuit Court for Multnomah County, Case No. 0005-04358 (*Brasher's Cascade Auto Auction v. McCarty*).

///

///

///

///

///

///

///

#### IV. Final Distributions and Case Closure

Upon the Court's final determination as to which claims are timely and valid, the Court should enter an order to disburse: (a) the amount of any awarded claims to the respective claimant(s) (in a pro-rata portion of the claims or in any other equitable amount, if necessary, due to a lack of sufficient funds to pay all valid claims); and (b) any balance of the Bond Proceeds to Plaintiff.<sup>4</sup>

DATED this 5th day of March, 2015.

STEWART SOKOL & LARKIN LLC

By: s/ Lawrence A. Wagner  
Lawrence A. Wagner, OSB #024770  
lwagner@lawssl.com  
*Attorneys for Plaintiff Tower Insurance  
Company of New York*

---

<sup>4</sup> Even if all filed claims are granted, there should be funds to return to Plaintiff given the limit on non-retail customer claims (\$20,000 total), and the limited sum of the sole retail customer claim (which the undersigned understands is approximately \$900-\$1,000 based on communications with the claimant as of March 5, 2015 and previous communications).

### CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **MOTION REGARDING RESOLUTION OF CLAIMS AND FINAL DISBURSEMENT OF FUNDS** on:

Michelle M. Bertolino  
Farleigh Wada Witt  
121 SW Morrison Street, Suite 600  
Portland, Oregon 97204  
Attorneys for Defendant Unitus  
Community Credit Union

James P. Laurick  
Kilmer Voorhees & Laurick PC  
732 NW 19<sup>th</sup> Avenue  
Portland, Oregon 97209  
Attorneys for Defendant Twinstar  
Credit Union

Daniel L. Duyck  
Whipple & Duyck PC  
1500 SW 1<sup>st</sup> Avenue, Suite 1170  
Portland, Oregon 97201  
Attorneys for Defendant Westlake Flooring  
Company LLC dba Westlake Flooring  
Services

Thomas M. Orr  
Hutchinson Cox Coons Orr & Sherlock  
Post Office Box 10886  
Eugene, Oregon 97440  
Attorneys for Defendant Oregon  
Community Credit Union

by the following indicated method or methods:

✓ by **E-filing** a full, true and correct copy thereof to the attorney at the electronic mail address reflected on the court's CM/ECF system, on the date set forth below; and on

Teresa L. Byle  
3101 Colony Mountain Lane  
Bow, Washington 98232

Logan Driedric  
1325 SE 85th Avenue  
Portland, Oregon 97216

Jonathan Gilbert  
2778 Cambridge Street  
West Linn, Oregon 97068

Cameron Johnson  
8906 SE Market Street  
Portland, Oregon 97216

Love Martino  
2308 SE 110th Avenue  
Portland, Oregon 97216

Karen Bersine  
1256 Avenue A, Apartment A  
Seaside, Oregon 97138

The Equitable Finance Company  
Attention: Karin Spruance  
4124 SE 82nd Avenue, Suite 650  
Portland, Oregon 97266

Tina Harral  
7995 SE Otty Street  
Portland, Oregon 97222

Nathan Langer  
625 NE Country Club Avenue  
Gresham, Oregon 97030

Love Martino  
1161 SE Boise Street  
Portland, Oregon 97266

CERTIFICATE OF SERVICE - 1

1591.001-01160567; 1

STEWART SOKOL & LARKIN LLC

ATTORNEYS AT LAW

2300 SW First Avenue, Suite 200  
Portland, OR 97201-5047  
(503) 221-0699  
FAX (503) 223-5706

Rose City Auto Group, LLC  
c/o Leonard M. Shiley, Member and  
Registered Agent  
7717 SW Greenwood Drive  
Portland, Oregon 97223

Ethan Chatov  
Chatov Law LLC  
1220 NW Eastman Pkwy  
Gresham, Oregon 97030  
Attorneys for Defendant Nathan Langer

Lobel Financial Corporation  
Attention: Gary Dean Lobel  
1150 North Magnolia Avenue  
Anaheim, California 92801

Rachel Schantin  
10180 SW Nez Perce Drive  
Culver, Oregon 97734

Leonard M. Shiley  
7717 SW Greenwood Drive  
Portland, Oregon 97223

Joanna Stoner  
Post Office Box 381  
Onalaska, Washington 98570

Stephen Stoner  
Post Office Box 381  
Onalaska, Washington 98570

Anan Srivilai  
8509 NE Thompson Street  
Portland, Oregon 97220

by the following indicated method or methods:

  ✓   by **mailing** a full, true and correct copy thereof in a sealed, first-class postage-paid envelope, and addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Portland, Oregon on the date set forth below.

DATED this 5th day of March, 2015.

s/ Lawrence A. Wagner  
Lawrence A. Wagner, OSB #024770  
lwagner@lawssl.com  
Attorneys for Plaintiff Tower Insurance  
Company of New York

CERTIFICATE OF SERVICE - 2

1591.001-01160567; 1

STEWART SOKOL & LARKIN LLC  
ATTORNEYS AT LAW  
2300 SW First Avenue, Suite 200  
Portland, OR 97201-5047  
(503) 221-0699  
FAX (503) 223-5706